Supreme Court, U.S.
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No. 98-1814

In The

Supreme Court of the United States

JAMES CANNINGS, et al.,

Petitioners,

v.

THE LIBRARIAN OF CONGRESS, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

SUPPLEMENTAL BRIEF

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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 15.8 of the rules of this Court petitioners submit this supplemental brief to address the implications of the opinion of this Court in *Dickinson, Acting Commissioner of Patents and Trademarks v. Zurko et al.* No. 98-377. Argued March 24, 1999 – Decided June 10, 1999. This opinion demonstrates the importance of an issue placed before the Court by the pending petition for writ of certiorari.

In *Dickinson*, this Court held that the Federal Circuit *must* use the framework set forth in §706 when reviewing PTO findings of fact. Pp. 3-14. This Court further stresses that, absent an exception, a reviewing court *must* apply the APA's court/agency review standard to *agency* factual findings (emphasis added). The Court of Appeals for the District of Columbia Circuit bases such an exception on the fact that subsection 802(g) of the Copyright Royalty Tribunal Reform Act of 1993, Pub. L. 103-198, 107 Stat. 2304 contains no reference to the APA. *National Associations of Broadcasters v. Librarian of Congress*, 146 F.3d 907 (D.C. Cir. 1998) at 919. However, the 1993 Act of Congress *did not clearly and expressly* grant an exception to the reviewing court to apply another standard of review. Therefore, according to this Court's opinion in *Dickinson*, the APA's court/agency review standard *must* apply to the agency (Librarian's) factual findings (emphasis added). The reviewing court did *not* apply the APA's standard of review in *Eugene Curry v. the Librarian of Congress* No. 97-1119 and *James Cannings v. the Librarian of Congress* (below) No. 98-1250.

Review by this Court of the petition of *James Cannings et al.*, is necessary to prevent further fundamental errors of analysis by the judiciary. The fact that this Court in *Dickinson*, held that the APA standard of review *must* apply and that the Court of Appeals for the District of Columbia Circuit rejected that analysis, demonstrates the necessity for guidance by this Court as to the correct standard of review in *Curry* and *Cannings*. The opinion of this Court in *Dickinson*, provides additional reasons to grant the pending petition. Therefore, this Court should grant the Petition for Writ of Certiorari.

Respectfully Submitted,

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